

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JULIE DALESSIO, an individual,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, a
Washington Public Corporation; Eliza
Saunders, Director of the Office of Public
Records, in her personal and official
capacity; Alison Swenson, Compliance
Analyst, in her personal capacity; Perry
Tapper, Public Records Compliance
Officer, in his personal capacity; Andrew
Palmer, Compliance Analyst, in his
personal capacity; John or Jane Does 1-12,
in his or her personal capacity,

Defendant.

No. 2:17-cv-00642-MJP

OBJECTION TO DEFENDANTS' REVISED
PROPOSED FIRST AMENDED ANSWER IN
DOCUMENT 102-1

“[T]he purpose of an objection is to provide the district court an opportunity to correct any substantive errors before they are appealed.” US v. Wiley, 509 F. 3d 474, 479 (8th Cir. 2007).

Plaintiff Julie Dalessio objects to Defendants' revised proposed first amended answer in document 102-1 because it was not presented timely to the court or to Plaintiff to brief for adversarial argument. Instead, Defendants improperly attempted to finesse new changes into its proposed amended answer when it filed its reply to the motion for leave to amend answer to add

1 two affirmative defenses in document 97-1.

2 “Central to requiring the pleading of affirmative defenses is the prevention of unfair
3 surprise. A defendant should not be permitted to "lie behind a log" and ambush a plaintiff with an
4 unexpected defense.” *Ingraham v. United States*, 808 F. 2d 1075, 1097 (5th Cir. 1987); *United*
5 *States v. First Nat. Bank of Circle*, 652 F. 2d 882, 886 (9th Cir. 1981) (stating disregard of the
6 principles stated in Rule 1 of the Federal Rules of Civil Procedure “would bring back the days of
7 trial by ambush and discourage timely preparation by the parties for trial.” The Federal Rules
8 of Civil Procedure “of course, were designed to make pretrial and discovery uniform across the
9 country and to *prevent* ‘trial by ambush.’” *Smith v. Ford Motor Co.*, 626 F. 2d 784, 797 (10th Cir.
10 1980).

11 The Federal Rules of Civil Procedure require Defendants give timely notice of proposed
12 changes in the revised proposed first amended answer in document 102-1, so that Plaintiff Julie
13 Dalessio has the opportunity to argue against the new revisions that were not in document 97-1.
14 This Court cannot entertain the revised proposed first amended answer in document 102-1
15 because it was not timely, and it is an impermissible ambush.

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17 Respectfully submitted this 02 day of August, 2018

18 Law Office of Joseph Thomas

19 /s/ Joseph Thomas
20 Joseph Thomas, WSBA 49532
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Certificate of Service

I hereby certify that on 02 of August, 2018, I filed the foregoing with the Clerk of the Court through the CM/ECF system which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Electronic Email Notice List.

/s/ Joseph Thomas
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